Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-818

ADELINE KARLJOLIC,

Petitioner,

vs.

ILLINOIS BELL TELEPHONE COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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OPINION BELOW

There is no opinion of the United States Court of Appeals for the Seventh Circuit. An unpublished order is attached as Appendix "A" hereto. The summary judgment of the district court was affirmed from the bench by the Court of Appeals on April 27, 1979. A copy of the district court's opinion granting summary judgment is attached as Appendix "B".

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on April 30, 1979, a copy of which is set forth as Appendix "C", and a petition for rehearing was denied on August 27, 1979. The order of denial is reproduced at Appendix "D". The jurisdiction of the Supreme Court is invoked under Title 28 U.S.C. § 1254(1).

QUESTION PRESENTED

May a Court of Appeals affirm a district court's summary judgment in favor of an employer in an action under the Age Discrimination in Employment Act when the employee alleges material fact issues that she was "discharged" for age-related reasons in failing to qualify for a lateral job change, and the employer classifies the termination as an involuntary "retirement" pursuant to a bona fide pension plan which is not a subterfuge to evade the purposes of the Act, when there is evidence in the record that "retirement" was never contemplated by either party until *after* plaintiff allegedly failed to qualify for the lateral job change, and there was evidence that plaintiff had to be age 55 or more, with 30 or more years seniority to qualify to remain with the employer?

STATUTE INVOLVED

Age Discrimination in Employment Act.
Title 29 U.S.C. § 623.
[of 1967 and Amendment of 1978]

§ 623. Prohibition of age discrimination

Employer practices

(a) It shall be unlawful for an employer—

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce the wage rate of any employee in order to comply with this chapter.

Lawful practices; age as occupational qualification; other reasonable factors; seniority system; employee benefit plans; discharge or discipline for good cause

(f) It shall not be unlawful for an employer, employment agency, or labor organization—

(1) to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age;

(2) to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual; or

(3) to discharge or otherwise discipline an individual for *good* cause.

Pub.L. 90—202, § 4, Dec. 15, 1967, 81 Stat. 603.

Lawful practices; age as occupational qualification; other reasonable factors; seniority systems; employee benefit plans; discharge or discipline for good cause

(f) It shall not be unlawful for an employer, employment agency, or labor organization—

(2) to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title because of the age of such individual; or

As amended Pub.L. 95—256, § 2(a), Apr. 6, 1978, 92 Stat. 189.

STATEMENT OF CASE

In December of 1976 petitioner was 53 years of age and had been employed by defendant for over 30 years, with 27 years seniority. For several years prior to October of 1976 she had done a commendable job for defendant as a "cord board" switchboard telephone operator manually connecting lines and taking calls by pulling a cord and plugging it into a switch. She is unmarried, lives with her mother, whom she supports with her retarded, ineducable child. These circumstances were known to respondent.

By 1976 most manual cord board operators' positions, including the petitioner's, were being phased out in favor of automation which made telephone directory assistance computerized. Petitioner was placed in a training program alleged to be inadequate under the circumstances in light of her age and experience, to help her to learn the new work. One such program consisted of six weeks training course during which time there was an exposure of petitioner to three different trainers and techniques for two weeks each. Respondent alleged petitioner did not pass this training program. The test scores were not shown to her. Petitioner felt that though she had been able to learn the theory of the new system she needed more practical experience. Up to this point, the thought or suggestion of retirement had not ever been contemplated by either petitioner or respondent.

On December 15, 1976 petitioner was informed by a training supervisor of defendant as follows: "Your evaluation today was bad. We are forcing you out on retirement." On December 17, 1976 petitioner pleaded to have a cord board type job from defendant which still

maintained some manual-type switchboards. She was offered a similar type manual switchboard job but about 35 miles away from her home, which she declined because she didn't drive a car, she did not want to be too far from her retarded child and mother, and the job would have likewise been phased out anyway within about one more year.

In fact, respondent maintained another manual switchboard office which was not closing where petitioner could have been a cord board operator. However, it was the policy of defendant that no one with less than 30 years of service for defendant could work at that facility. While petitioner had 33 years of service with respondent, she had only 27 years seniority, because of a few years' interruption of her service in approximately 1949.

According to unrebutted deposition testimony of a union steward for the telephone operators, various pressures were brought to bear on "old timers" via inadequate retraining, verbal discouragements and actual threats of forced retirement if unable to meet certain unobtainable standards.

Petitioner was placed on "forced" retirement in accordance with defendant's pension plan.

Petitioner filed suit alleging that she had been terminated because of her age in violation of the Age Discrimination in Employment Act. The District Court granted summary judgment for defendant finding that petitioner was retired pursuant to the terms of a bona fide pension plan which was not "under the holding in *McMann*, a subterfuge to avoid the purposes of the ADEA." (A copy of the opinion is attached hereto as Appendix "B"), in the face of the surrounding facts.

Petitioner appealed this decision to the United States Court of Appeals for the Seventh Circuit. On April 27, 1979, after having heard oral argument of petitioner only, the court announced from the bench that the judgment appealed from was affirmed. (Appendix "A").

REASONS FOR GRANTING WRIT

In affirming the judgment of the District Court, the United States Court of Appeals has decided an important question of federal law which has not been but should be settled by the United States Supreme Court, and has, in effect, made it virtually impossible for an aggrieved individual to bring an action under the Age Discrimination in Employment Act where there is a genuine dispute whether an individual was "fired" or "involuntarily retired" under a pension plan.

A large class of aged and aging American workers will be foreclosed from protection afforded by the 1978 Amendments unless the Supreme Court hears this case.

ARGUMENT

I.

PETITIONER HAS BEEN PRECLUDED FROM EVEN PRESENTING ANY EVIDENCE OF AN AGE DISCRIMINATION CLAIM UNDER § 623(A)(1) BY VIRTUE OF A SUMMARY JUDGMENT IN FAVOR OF THE DEFENDANT BECAUSE OF DEFENDANT'S "DEFENSE" THAT PETITIONER WAS RETIRED INVOLUNTARILY ACCORDING TO A BONA FIDE RETIREMENT PLAN.

What is the purpose of having the law if one can not even present evidence of an existing cause of action under it?

Crowlishaw v. Armstrong Rubber Co., 450 F.Supp. 148 (1978) (E.D.N.Y.) illustrates this point specifically. That case also involved an involuntary early retirement according to a pension plan. The plaintiff, attempting to bring an age discrimination claim, was apparently prepared to present his evidence that his termination was motiviated or controlled by his age. Defendant employer made a motion for summary judgment. The court stated:

> "Although the data indicate that on any view of the law defendant's prospects at a trial on the merits are very high, the question on the present motion is not that. It is whether, in the light of the statute and controlling case law, the involuntary early retirement of an employee pursuant to the terms of a regularly established and long-standing pension plan . . . can ever be found to be unlawfully discriminatory discharge under ADEA."

The court did not find *United Airlines, Inc. v. McMann*, 1977, 434 U.S. 192, 98 S. Ct. 444, 54 L.Ed.2d 402 to settle the point. The *United* pension plan was one which required retirement at age 60 and did not involve a question of early retirement at the employer's option.

Nor did the court, in reviewing *Zinger v. Blanchette*, 3rd Cir. 1977, 549 F.2d 901, agree with the concept that early retirement at company option, although obviously a discrimination based on age, was not a violation of ADEA.

While retirements, related to the infirmities of age present one justification for pension planning and early retirement provisions, a retirement system used to cut payroll costs without reference to considerations relevant to retirement and pension planning and without reference to whether each of the employees should or should not have been retired does not justify involuntary early retirement. The court in concluding the issue stated:

> "The statute does not enact any presumption that the discharge of a person between the ages of 45 and 65 is treated as discrimination by reason of age unless the employer shows the contrary. The burden of proof is on the employee to show that the discharge was based on age and not cause or some other licit consideration . . . whatever else § 623(f)(2) is intended to accomplish, it can not be supposed to legitimate dismissals of entire age groups by reason of age without consideration of individual job fitness by taking advantage of early retirement options presumably designed to accommodate individual variances within a scheme entered on a stated normal retirement age. The very widespread inclusion in pension plans of early retirement provisions suggests that the use of forced early retirement to lighten payroll costs by forcing older, higher paid employees into retirement is very far from what the Congress had in mind when it said that it was not unlawful for an employer 'to observe the terms of a bona fide . . . retirement plan, which is not a subterfuge to evade the purposes of this chapter."

Summary judgment was denied in this case with the finding that § 623(f)(2) did not mean that every involuntary early retirant under a pension plan who received a substantial retirement allowance was automatically outside the ADEA. The plaintiff was entitled to present his proof of age discrimination.

A similar sentiment was expressed by the Court in *Havelich v. Julius Wile & Sons, Inc.*, 445 F.Supp. 919 (S.D.N.Y.) 1978. Here the Court reasoned that to prevent a plaintiff, who was involuntarily retired from presenting his evidence that the retirement was really a discharge because of his age, constitutes use of a pension plan as a "subterfuge to evade the purposes of the Age Act." The involuntary retirement in effect forecloses an age discrimination claim.

Petitioner's evidence of age discrimination consists of the fact that deliberately inadequate retraining by defendant was the reason that her training level was not up to par and that her training level was the basis of defendant's decision to place her on involuntary retirement. When an employer's decision to discharge a plaintiff is based on the training level of the plaintiff and when, in turn, training level is directly related to the age of the employer, then use of training level as the basis of a discharge decision constitutes age discrimination. *Coates v. National Cash Register Co.*, 433 F. Supp. 655 (W.D. Va. 1977).

Therefore, by virtue of the foregoing reasoning, petitioner should not have been precluded on a summary judgment against her from presenting her evidence of age discrimination.

II.

THE 1978 AMENDMENTS TO THE ADEA ARE APPLICABLE TO PETITIONER'S 1976 TERMINATION AND WOULD AFFECT A LARGE CLASS OF PERSONS INTENDED BY CONGRESS TO BE PROTECTED.

In holding that the 1978 amendments to the Act are not applicable to the petitioner's 1976 termination the United States Court of Appeals for the Seventh Circuit is in conflict with *Davis v. Boy Scouts of America*, 457 F. Supp. 665 (D.N.J. 1978). In this case the Court held that by the amendment, Congress meant to overturn decisions interpreting the Act so as to allow involuntary or mandatory retirement on the basis of a "bona fide" pension plan.

> "It was felt that this was necessary to protect the inchoate rights of employees to full benefits under their pension plans. Initially, it appeared that the plaintiff was seeking a retroactive application of the amendment upon reflection, however, it appears that what is being suggested is that I apply the law which is currently in effect when I make my decision. Congress has seen fit to change the interpretation of the ADEA given by the Supreme Court in *United Air Lines v. McMann*, 434 U.S.192, 98 S.Ct. 444, 54 L. Ed.2d 402 (1977), to comport with what it says was its original intent. This change, in the state of the law, is analogous to a reversal by the Supreme Court of an earlier decision in that the inferior federal courts become bound to apply the law as revised, not as it was sometime earlier. *Bradley v. Richmond School Bd.*, 416 U.S. 696, 710-16, 94 S.Ct. 2006, 40 L. Ed.2d 476 (1974)."

Under the amendments, pension plan provisions in effect prior to the date of enactment are not exempt under § 4(f)(2), H.R. Rep. No. 95-950, 95th Cong., 2nd Session 1978. In deciding whether to retire an employee,

an employer cannot lawfully consider only the employee's age. This would comport with the Congressional intent in overturning *McMann, supra* which held at 424 U.S. 195 that where § 4(f)(2) applies, it is in error to require a showing of "some economic or business purpose other than arbitrary age discrimination."

Under the amendments which apply to petitioner's termination, petitioner has raised a material question of fact as to whether she was involuntarily retired because of her age. Therefore, summary judgment was inappropriate.

III.

WHETHER THE AMOUNT OF BENEFITS TO AN INVOLUNTARY RETIREE IS SUBSTANTIAL SO AS NOT TO BE A SUBTERFUGE TO A QUESTION OF FACT.

In *Zinger v. Blanchette*, 549 F.2d 901 (3rd Cir. 1977), cert. den., 434 U.S. 1008 (1978) it states "the parties concede that the plan is bona fide and the payment not unreasonable—certainly not so small as to brand the plan a subterfuge to evade purposes of the Act." Therefore the adequacy of the pension payments goes to the issue of whether the retirement plan is really a subterfuge to evade the purposes of the Act.

"Evidence sufficient to sustain a finding of subterfuge would have to establish that the retirement benefits payable to the retired employee were unsubstantial or, if substantial, that continued payment thereof was likely to be jeopardized," *Walker Manufacturing Co. v. Industrial Commission of Wisconsin*, 27 Wis. 2d 669, 135 N.W. 2d 307 (1965). The court in *Walker*, also indicated that it would be a subterfuge of the age act to deprive employees of the earnings which are necessary to maintain a just and decent standard of living, thereby committing grave injury to them.

When Karijolic was employed she was receiving $220.00 a *week* net pay. Karijolic's *monthly* pension payment under the plan is only $215.51. By virtue of the inadequate pension payments she is being deprived of a just and decent standard of living. If Karijolic can establish that in fact the benefits were unsubstantial this then would be evidence of a subterfuge of the ADEA. Therefore, it is a material question of fact as to whether the payment of benefits under Bell's plan is so unsubstantial as to constitute subterfuge to evade the purposes of the ADEA.

CONCLUSION

For the foregoing reasons, which illustrate that summary judgment is improper in this case, this petition for a *writ of certiorari* should be granted.

Respectfully submitted,

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APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

(Argued April 27, 1979)

April 30, 1979.

Before

Hon. THOMAS E. FAIRCHILD, *Chief Judge*
Hon. LEONARD PAGE MOORE, *Senior Circuit Judge**
Hon. ROBERT A. SPRECHER, *Circuit Judge*

ADELINE KARIJOLIC,

Plaintiff-Appellant,

No. 78-2274 *v.*

ILLINOIS BELL TELEPHONE COMPANY,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 77-C-1951—**Stanley J. Roszkowski**, *Judge.*

[UNPUBLISHED PER CURIAM ORDER]

The Court, having read the briefs, addressed itself to the record, heard oral argument on behalf of the

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* Senior Circuit Judge Leonard Page Moore of the United States Court of Appeals for the Second Circuit is sitting by designation.

appellant, and conferred at the bench, announced in open court that the judgment appealed from is AFFIRMED.

There is no material dispute that the plaintiff's termination occurred pursuant to the terms of a bonafide retirement plan that was not a subterfuge to evade the purposes of the Age Discrimination Act. The case is controlled by *United Airlines v. McMann*, 434 U.S. 192 (1977), and summary judgment for the defendant was appropriate. The 1978 amendments to the Act are not applicable to the plaintiff's 1977 termination.

Accordingly, the Clerk of this Court is directed to enter judgment AFFIRMING the judgment appealed from.

APPENDIX "B"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 77 C 1951

ADELINE KARIJOLIC,

Plaintiff,

v.

ILLINOIS BELL TELEPHONE COMPANY,

Defendant.

ORDER

This matter is before the court on defendant's motion for summary judgment.

Plaintiff, Adeline Karijolic, filed a complaint against her employer, Illinois Bell Telephone Company ("Illinois Bell") alleging she was discharged from employment by defendant in violation of the Age Discrimination in Employment Act ("ADEA") as amended, 29 U.S.C. § 621. Jurisdiction is invoked pursuant to 28 U.S.C. § 626.

The following facts are not in dispute. Plaintiff was born on June 20, 1923. She began working for defendant in 1946 and continued to work at Illinois Bell until she resigned in 1956. In 1959 she resumed working for defendant. For several years prior to October 1976, plaintiff was an operator at Illinois Bell's Irving office. When the Irving office closed on October 8, 1976, plaintiff was transferred to defendant's Hanson Park directory assistance office. She was placed in training since the job at the Hanson Park office involved

different work than that performed by plaintiff at Irving. She was advised that she had not passed the training and thereafter defendant sent her to its Ontario TSPS office, where plaintiff was also given training for a new job. She did not pass this training program either. On December 17, 1976, plaintiff was offered a job by James Propones, a manager for defendant Illinois Bell's Wheaton office, performing the same work she had done at Irving. However, this job would terminate the following October or December, when the Wheaton office closed. Plaintiff declined this job offer. Subsequently, she was placed on retirement by Illinois Bell. At the time she was placed on retirement, February 8, 1977, Karijolic was 53 years old and had 27 years of service for Illinois Bell. According to Section 4.1 of defendant's pension plan, the employer has the option to retire employees who have reached 50 years of age and have at least 25 years of service.

The Illinois Bell Telephone Co. Plan for Employees' Pension, Disability Benefits and Death Benefits has been continuously in effect since its adoption in 1913 and is a qualified plan within the meaning of Section 401 of the I.R.S. Code. The Plan as initially adopted (1913) provided in Section 1, that employees who met the particular age and length of service requirements specified could be retired at the option of the company. In 1946 the provision was amended to require approval of the Benefit Committee to retire an employee at the option of the company. The present language of Section 4.1(a) was adopted on October 1, 1971.[1] (Aff. Herron ¶ 6, Exhibits B, C, D, defendant motion for summary judgment). Defendant's Benefit Committee, pursuant to Section 4.1 of the Plan, place Karijolic on a service pension. (Aff. Herron, ¶7).

On June 1, 1977, plaintiff filed her complaint alleging that Illinois Bell "intentionally, knowingly, voluntarily, wrongfully and unlawfully discharged [her] because of her age . . ." In its Answer, defendant denied plaintiff was discharged and affirmatively stated she was retired

pursuant to a bona fide employee benefit plan which was not a subterfuge to evade the purposes of the ADEA and, therefore, the ADEA was not violated.

Illinois Bell contends that the retirement of plaintiff did not violate ADEA because it fell within the exception contained in Section 4(f)(2) of the Act. That section provides:

> "It shall not be unlawful for an employer . . . to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension or insurance plan which is not a subterfuge to evade the purpose of this [Act], except that no such employee benefit plan shall excuse the failure to hire any individual. . . . 29 U.S.C. § 623(f)(2).

In *United Airlines v. McMahon*, ... U.S. ....., 97 U.S.Ct. ....., 16 F.E.P. 147, the Supreme Court held that a bona fide retirement plan which was in effect before the ADEA cannot be a subterfuge to evade the ADEA. The court stated:

> "We find nothing to indicate Congress intended wholesale invalidation of retirement plans instituted in good faith before its [ADEA] passage, or intended to require employers to bear the burden of showing a business or economic purpose to justify bona fide pre-existing plans as the Fourth Circuit concluded. In ordinary parlance, as in dictionary definitions as well, a subterfuge is a scheme, plan, stratagem or artifice of evasion. In the context of this statute, "subterfuge" must be given its ordinary meaning and we must assume Congress intended it in that sense."

In *Minton v. Whirlpool Corp.*, 77-1777 (7th Cir. Jan. 24, 1978), this circuit affirmed the granting of a motion for summary judgment in a suit involving involuntary early retirement pursuant to a bona fide pension plan where the plaintiff conceded that the pension plan was

bona fide, that he received benefits pursuant to the plan and the plan was enacted before the enactment of ADEA. See *Rogers v. Exxon Research & Engineering Co.*, 550 F.2d 834 (3rd Cir. 1977) *cert. denied*, 46 USLW 3431 (Jan. 10, 1978) and *Zinger v. Blanchette*, 549 F.2d 901 (3rd Cir. 1977), *cert. denied*, 46 USLW 3431 (Jan. 10, 1978), both of which involved involuntary early retirement pursuant to bona fide pension plans.

Plaintiff concedes that defendant's pension plan was a bona fide plan (Plaintiff Answer and Brief in Opposition to Defendant's Motion for Summary Judgment, page 3). It is also undisputed that plaintiff has received monthly pension payments under the plan of $215.15 plus additional benefits. (Aff. John E. Herron, ¶ 8). There is no dispute that the defendants plan was in effect before the enactment of ADEA.

Plaintiff has raised the issue of whether her retirement was voluntary or involuntary. While we recognize the distinction between a voluntary choice made by a retiree and an involuntary retirement at the behest of the company, the issue presented here is whether the distinction would result in a finding of a violation of the Act in one case but not in the other. We hold that it would not, so long as the retirement was pursuant to a bona fide plan.

In *Zinger v. Blanchette, supra*, the court stated:

> "To summarize, involuntary retirement pursuant to a bona fide plan that is not a subterfuge but which requires or permits retirement at age 60 at the option of the employer is not unlawful." 549 F.2d at 910.

See *Minton v. Whirlpool Co., supra.*

Section 4.1(a) of defendant's plan provides that the company, at its option, may retire employees prior to age 65 if the employee meets other requirements. So long as defendant observes the terms of its bona fide

pension plan in retiring an employee, even if the retirement is involuntary, defendant's actions cannot be said to violate the act. *Zinger v. Blanchette, supra; Dunlop v. General Telephone Co.*, 13 F.E.P. 1210 (C.D. Cal. 1976).

It is apparent that plaintiff met the terms of service in Section 4.1(a), was retired pursuant to the terms of a bona fide pension plan which provides that Illinois Bell may retire at its option, and further that this plan is not, under the holding in *McMann*, a subterfuge to avoid the purposes of ADEA.

Because we find that plaintiff was retired pursuant to a bona fide pension plan and that the ADEA was not violated, it is not necessary to reach defendant's alternative grounds for granting the motion.

A motion for summary judgment is appropriate where there are no genuine issues of material fact and as a matter of law the moving party is entitled to judgment. Rule 56, Fed. R. Civ. Pr. After a thorough review of all pleadings, affidavits and the record as a whole, viewing all evidence in the light most favorable to the party opposing motion, we conclude that summary judgment in favor of defendant is appropriate in this case.

We feel this conclusion is perhaps harsh and unfortunate in its effect on the individual plaintiff involved, but unavoidable in light of the current case law.

This case, therefore, is dismissed.

ENTER:

/s/ Stanley J. Roszkowski
Judge United States District Court

Dated: September 7, 1978.

FOOTNOTE

[1] "a. *Service Pension*

Effective January 1, 1976, all employees who have reached the age of sixty-six years (normal retirement age) and whose terms of employment have been fifteen or more years, all employees who have reached the age of fifty-five years and whose terms of employment have been twenty or more years, all employees who have reached the age of fifty years and whose terms of employment have been twenty-five or more years, and all employees regardless of age whose terms of employment have been thirty or more years shall if they so request, or may at the discretion of the Committee, be retired from active service and, upon such retirement, shall be granted service pensions.

APPENDIX "C"

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Before April 30, 1979

Hon. THOMAS E. FAIRCHILD, *Chief Judge*
Hon. LEONARD PAGE MOORE, *Senior Circuit Judge**
Hon. ROBERT A. SPRECHER, *Circuit Judge*

ADELINE KARIJOLIC,

Plaintiff-Appellant,

No. 78-2274 *v.*

ILLINOIS BELL TELEPHONE COMPANY,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 77-C-1951—**Stanley J. Roszkowski,** *Judge.*

[UNPUBLISHED PER CURIAM ORDER]

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the order of this court entered this date.

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* Senior Circuit Judge Leonard Page Moore of the United States Court of Appeals for the Second Circuit is sitting by designation.

APPENDIX "D"

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

August 27, 1979.

Before

Hon. THOMAS E. FAIRCHILD, *Chief Judge*
Hon. LEONARD P. MOORE, *Senior Circuit Judge**
Hon. ROBERT A. SPRECHER, *Circuit Judge*

ADELINE KARIJOLIC,

Plaintiff-Appellant,

No. 78-2274 *v.*

ILLINOIS BELL TELEPHONE COMPANY,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 77-C-1951—**Stanley J. Roszkowski**, *Judge*.

ORDER

On consideration of the petition for rehearing filed in the above-entitled cause by counsel for the plaintiff-appellant, all members of the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the petition for rehearing be, and the same is hereby, DENIED.

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* Senior Circuit Judge Leonard P. Moore of the United States Court of Appeals for the Second Circuit is sitting by designation.